

UNITED STATES OF AMERICA,	•	Docket No. 4:17CR3102
	•	
Plaintiff,	•	
	•	
vs.	•	Lincoln, Nebraska
	•	July 24, 2018
MIGUEL ANGEL LOPEZ-AGUIRRE,	•	10:33 a.m.
	•	
Defendant.	•	
• • • • •		

APPEARANCES:

For the Defendant: **MS. NANCY K. PETERSON, ESQ.**
Peterson Law Office
200 Windsor Place
330 South Tenth Street
Lincoln, NE 68508

Proceedings recorded by electronic sound recording, transcript produced by transcription via mechanical stenography.

I N D E X

Direct Cross Redirect RecrossWITNESSES FOR THE GOVERNMENT:

None

WITNESSES FOR THE DEFENSE:

None

EXHIBITS:Marked Received

None

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Change of Plea

1 (At 10:33 a.m. on July 24, 2018, with counsel for the
2 plaintiff present, counsel for the defendant present, and the
3 defendant present, the following proceedings were had:)

4 THE COURT: We're on the record in Case
5 Number 4:17CR3102, United States of America vs. Miguel
6 Lopez-Aguirre.

7 Counsel, please enter your appearance.

8 MR. MOLSEN: Your Honor, please show the appearance
9 of Matt Molsen for the government.

10 MS. PETERSON: Nancy Peterson on behalf of the
11 defendant, Your Honor.

12 THE COURT: Mr. Lopez-Aguirre, I have been told
13 that you want to enter a plea of guilty. Is that true?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: I need to explain to you, sir, that I
16 am not your sentencing judge, and I am not the judge who will
17 determine whether this guilty plea is accepted. That matter
18 will be taken up by Judge Kopf, who is your sentencing judge.
19 But what I can do for you today is gather some information
20 from you and make a recommendation to Judge Kopf on that
21 issue. Do you agree to proceed before me?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Please raise your right hand.

24 (Defendant sworn.)

25 THE DEFENDANT: Yes, I do, Your Honor.

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1 THE COURT: You're now under oath. You have sworn
2 to tell the truth, which means if you lie during this
3 proceeding you can be separately prosecuted for the crime of
4 perjury. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: At this time I am going to have
7 Mr. Molsen, on behalf of the government, explain the charges
8 to which you intend to plead guilty and the possible penalty
9 for those charges. Please listen.

10 MR. MOLSEN: Yes, Your Honor.

11 Sir, the indictment alleges in Count I that on or
12 about April 20th of 2017 in the District of Nebraska that you
13 did knowingly and intentionally distribute five grams or more
14 of actual methamphetamine, a Schedule II controlled
15 substance.

16 Count II alleges that on or about May 1st of 2017
17 that you did knowingly and intentionally distribute
18 five grams or more of actual methamphetamine, a Schedule II
19 controlled substance.

20 And Count III alleges that on or about May 4th of
21 2017 in the District of Nebraska that you did knowingly and
22 intentionally distribute five grams or more of actual
23 methamphetamine, a Schedule II controlled substance.

24 Each of those charges are punishable by at least
25 five years' imprisonment and possibly up to 40 years'

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1 imprisonment, a fine of up to \$5 million, or any combination
2 of such fine and imprisonment, not less than four years of
3 supervised release, and a \$100 special assessment.

4 THE COURT: Do you understand the charges?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand the possible
7 penalties?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Having heard them again, is it still
10 your intent to plead guilty?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: I have in front of me a petition to
13 enter a plea of guilty. Do you have that in front of you?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: It appears that you signed this today.
16 Is that correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you talk about pleading guilty
19 before today?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: During those prior discussions with
22 your attorney were you under the influence of drugs or
23 alcohol or anything that would impair your thinking?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Are you under the influence of anything

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1 today?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Are you having any difficulty thinking
4 today?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: The petition itself has typed-in
7 answers. Did you go over the questions in the petition with
8 your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you answer the questions out loud?

11 THE DEFENDANT: Yes.

12 THE COURT: Did she place your answers in the
13 petition itself?

14 THE DEFENDANT: Yes.

15 THE COURT: Did she do so correctly?

16 THE DEFENDANT: Yes.

17 THE COURT: And after going through the document
18 did you sign it?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anybody threatened you in any way
21 to get you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Has anybody promised you anything to
24 get you to plead guilty?

25 THE DEFENDANT: No.

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1 THE COURT: Do you understand, sir, that if the
2 court accepts your plea of guilty you will be found guilty of
3 a felony?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand you have the right to
6 plead not guilty and make the government try to prove this
7 case at trial?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand you're giving up your
10 trial rights by pleading guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: You have been represented in this case
13 by Ms. Peterson; is that correct?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you believe that she has
16 investigated this case sufficiently so that you know what to
17 do today?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you satisfied with her
20 representation?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if you chose to
23 go to trial you would have the right to counsel
24 representation at the trial at no cost to you?

25 THE DEFENDANT: Yes.

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1 THE COURT: As that applies to you, Ms. Peterson
2 would be with you at the trial, she would represent your
3 interests, and she would never send you a bill for that
4 service. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if you chose to
7 go to trial you would have a jury trial?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that at that trial
10 you would have the right to see and hear the witnesses who
11 testify against you and to have them cross-examined on your
12 behalf?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand you would have the
15 right to call witnesses for you, and if they would not come
16 voluntarily you could get a court order called a subpoena to
17 make them come and testify?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that if you chose to
20 go to trial you could testify yourself if you wanted to or
21 you could exercise your right to remain silent?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if you remained
24 silent at the trial the jury would not be allowed to consider
25 that silence in deciding whether you are guilty?

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1 THE DEFENDANT: Yes.

2 THE COURT: And finally, sir, do you understand
3 that if you chose to go to trial the government would not get
4 a conviction against you unless it was able to prove to every
5 single juror that you are guilty beyond a reasonable doubt?

6 THE DEFENDANT: Yes.

7 THE COURT: Are you willing to give up all of those
8 trial rights and plead guilty in this case instead?

9 THE DEFENDANT: Yes.

10 THE COURT: With a guilty plea you will have a
11 felony record. With that felony record comes the loss of
12 civil rights. Those rights include the right to vote, the
13 right to serve in a jury, the right to hold a public office,
14 the right to carry a weapon. You can also lose federal
15 benefits, but you will lose rights. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And knowing that you will lose civil
18 rights, are you willing to plead guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: You're looking at a sentence on
21 Count I -- actually, you're looking at a sentence on each of
22 the three counts of a minimum of five years and up to 40
23 years in prison, a possible fine of up to \$5 million could be
24 imposed in addition to any term of imprisonment, supervised
25 release of at least four years, and a \$100 mandatory special

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1 assessment per count for a total of \$300.

2 Do you understand that that's what you're facing?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Has Ms. Peterson explained the
5 sentencing guidelines to you?

6 THE DEFENDANT: Yes.

7 THE COURT: Has she explained that those guidelines
8 provide the starting point that Judge Kopf will look at in
9 determining what your sentence ought to be?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that Judge Kopf will
12 consider all of your relevant conduct in determining your
13 sentence?

14 THE DEFENDANT: Yes.

15 THE COURT: For example, he's going to consider
16 such things as any criminal history you may have, how much
17 drugs, total drugs were involved in this case, whether you
18 played any leadership or managerial role in drug
19 distribution, whether there were guns involved with the
20 drugs, those types of things. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And once Judge Kopf looks at all of
23 that conduct and makes his findings, do you understand that
24 he can sentence you within the guidelines that you have
25 discussed with Ms. Peterson, but he doesn't have to? He can

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1 go above or below those guidelines based upon his findings.

2 Do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Then once Judge Kopf determines how
5 much time you will spend in prison, do you understand you
6 will be required to serve all of that time, and the most you
7 can get off of that sentence is 54 days per year for good
8 time served, and then that's only if you can earn that good
9 time? Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: After you get out of prison your
12 sentence will not yet be over. You will be required to
13 follow rules that are listed in your sentencing order for a
14 minimum of five -- four years. Those rules are called
15 conditions of release. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you were to violate those rules
18 during that four-year period of time you can be brought back
19 to court and sent back to jail. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand that if you
22 violate those rules by committing another crime, your penalty
23 or sentence on that separate crime could be greater than it
24 otherwise would have been merely because you were still
25 serving the sentence in this case when you committed the next

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1 crime? Do you understand?

2 THE DEFENDANT: Yes.

3 THE COURT: You will be required to pay the \$100
4 special assessment per count, for \$300. Do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: Is there any restitution?

7 MR. MOLSEN: No, Your Honor.

8 THE COURT: All right. You do not have a plea
9 agreement with the government; is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Were any written plea agreements
12 extended?

13 MR. MOLSEN: Yes, Your Honor.

14 THE COURT: All right. Let me ask you, sir, did
15 your attorney talk to you about the written plea agreement
16 that the government extended to you?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. After having those
19 discussions, did you decide to reject that plea agreement?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Do you believe that you and
22 your attorney had adequate time to consider that plea
23 agreement and make that decision?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand that the -- your

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1 attorney cannot guarantee one way or another whether it was a
2 good idea or not to accept or reject that plea agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Then at this time I am
5 going to have Mr. Molsen explain the factual basis. What
6 that means is the key facts the government would present at
7 trial if the case went to trial. I want you to listen as he
8 does that because I am going to ask you questions about what
9 he says.

10 Mr. Molsen?

11 MR. MOLSEN: Yes, Your Honor. Your Honor, on
12 April 20th of 2017 a cooperating informant, or a CI, at the
13 direction of law enforcement met with the defendant and
14 purchased methamphetamine from him. That methamphetamine was
15 later sent to the Nebraska State Patrol Crime Laboratory.
16 Testing there revealed that it contained at least 11 grams of
17 actual or pure methamphetamine.

18 On May 1st of 2017 at the direction of law
19 enforcement a CI again met with the defendant and bought
20 additional methamphetamine. That methamphetamine was later
21 sent to the laboratory and found to contain 9.6 grams of
22 actual methamphetamine.

23 And then, finally, on May 4th of 2017 a CI met with
24 the defendant, who purchased methamphetamine from him. That
25 methamphetamine was later sent to the laboratory and found to

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1 contain 5.6 grams of actual methamphetamine, all of those
2 events occurring here in the District of Nebraska.

3 THE COURT: Ms. Peterson, do you agree that if this
4 case went to trial that evidence would go before a jury?

5 MS. PETERSON: I do.

6 THE COURT: All right. Mr. Lopez-Aguirre, did you
7 listen as Mr. Molsen described the evidence against you?

8 THE DEFENDANT: Yes.

9 THE COURT: Is what he said the truth?

10 THE DEFENDANT: Yes.

11 THE COURT: Were you in Nebraska on April 20th of
12 2017?

13 THE DEFENDANT: Yes.

14 THE COURT: Were you also in Nebraska on May 1st of
15 2017?

16 THE DEFENDANT: Yes.

17 THE COURT: And were you also in Nebraska on
18 May 4th of 2017?

19 THE DEFENDANT: Yes.

20 THE COURT: On each of those days were you in
21 possession of methamphetamine?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you know that the drug you had in
24 your possession was in -- methamphetamine?

25 THE DEFENDANT: Yes.

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1 THE COURT: Did you sell the methamphetamine to
2 someone?

3 THE DEFENDANT: Yes.

4 THE COURT: On each of those dates?

5 THE DEFENDANT: Yes.

6 THE COURT: And did you do those sales here in
7 Nebraska?

8 THE DEFENDANT: Yes.

9 THE COURT: Any additional questions?

10 MR. MOLSEN: No, Your Honor.

11 THE COURT: Ms. Peterson?

12 MS. PETERSON: No, ma'am.

13 THE COURT: Mr. Molsen, do you believe the guilty
14 plea is knowing, intelligent, and voluntary and that there is
15 a factual basis for it?

16 MR. MOLSEN: Yes, Your Honor.

17 THE COURT: Do you agree, Ms. Peterson?

18 MS. PETERSON: I do.

19 THE COURT: All right. Mr. Lopez-Aguirre, do you
20 want this court to accept your plea of guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you have any questions of me before
23 I proceed?

24 THE DEFENDANT: No.

25 THE COURT: To Count I of the indictment, which

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1 alleges that on or about April 20th of 2017 you did knowingly
2 and intentionally distribute five grams or more of actual
3 methamphetamine, what do you plead?

4 THE DEFENDANT: Guilty.

5 THE COURT: Actually, there's one question I did
6 not ask. On each of the three days that you distributed
7 methamphetamine do you agree that the amount of
8 methamphetamine you had in your possession was five grams or
9 more?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Now I'll go back and start
12 this again. On Count -- to Count I of the indictment, which
13 alleges that on or about April 20th of 2017 in the District
14 of Nebraska you did knowingly and intentionally distribute
15 five grams or more of actual methamphetamine, what do you
16 plead?

17 THE DEFENDANT: Guilty.

18 THE COURT: To Count II of the indictment, which
19 alleges that on or about May 1st of 2017 when you -- while in
20 the District of Nebraska you did knowingly and intentionally
21 distribute five grams or more of actual methamphetamine, what
22 do you plead?

23 THE DEFENDANT: Guilty.

24 THE COURT: And to Count III of the indictment,
25 which alleges that on or about May 4th of 2017 you did

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1 knowingly and intentionally distribute five grams or more of
2 actual methamphetamine, what do you plead?

3 THE DEFENDANT: Guilty.

4 THE COURT: I do find that your guilty pleas are
5 knowing, intelligent, and voluntary and that there is a
6 factual basis for it. I will recommend to Judge Kopf that he
7 accept your plea of guilty.

8 Sentencing date we're looking at is October 16th at
9 one o'clock if that works for everyone.

10 MR. MOLSEN: Yes, Your Honor.

11 MS. PETERSON: It works for us, Your Honor.

12 THE COURT: All right. Now, Mr. Lopez-Aguirre, let
13 me see, I believe I read this this morning. It appears that
14 you have remained in compliance with all of the requirements
15 of pretrial services, including the drug treatment services
16 that they have had you going through and all of the
17 programming for drug treatment.

18 You need to applaud yourself for that. I don't get
19 to applaud everybody for that effort when they come in here.
20 I also would be doing you a disservice if I didn't give you a
21 warning to go with that. If you were to mess up after you
22 plead guilty in this case, the rules I am required to follow
23 change and I would have to place you in jail.

24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

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1 THE COURT: Okay. So you won't see me again
2 because you're not -- you're not going to misbehave; right?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. We are in recess.

5 MS. PETERSON: Thank you, Judge.

6 (Hearing adjourned at 10:47 a.m.)

7 § § §

8 I certify that the foregoing is a correct transcript from the
9 electronic sound recording of the proceedings in the
above-entitled matter.

10 Julie A. Pell, RPR, CRR, CRC

8/7/18

11
12 Signature of Transcriber
Julie A. Pell, RPR, CRR, CRR

Date

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